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Equal Employment Opportunity Commission v. Admiral Maintenance Service, LP, and OCS Management, Inc.

Judge Suzanne B. Conlon

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Equal Employment Opportunity Commission v. Admiral Maintenance Service, LP, and OCS Management, Inc.

Keywords

EEOC, Admiral Maintenance Service LP, OCS Management Inc., 97 C 2034, Consent Decree, Disparate Treatment, Hiring, Race, Black, Service, Employment Law, Title VII

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff,)

v.)

ADMIRAL MAINTENANCE SERVICE, L.P.,)
and OCS MANAGEMENT, INC.,)

Defendants.)

Civil Action No. 97 C 2034

Suzanne B. Conlon, Judge

DOCKETED

APR 09 1998

CONSENT DECREE

THE LITIGATION

1. In this action by Plaintiff, the U.S. Equal Employment Opportunity Commission ("EEOC"), against Defendants, Admiral Maintenance Service, L.P. and OCS Management, Inc. (collectively "Admiral"), the EEOC alleged violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* ("Title VII"). Specifically, the EEOC alleged that Admiral engaged in a pattern and practice of unlawful employment discrimination on the basis of race by refusing to hire Blacks.

2. Admiral denies the EEOC's allegations. Admiral's execution of the Consent Decree does not constitute any admission by Admiral that any action or inaction with respect to Black applicants, employees, or prospective applicants was wrongful, unlawful, or in violation of Title VII. Instead, this Consent Decree is entered into solely for the purpose of compromise and in order to fully resolve all matters pertaining to the above-referenced dispute. Neither Admiral's agreement to enter into the Consent Decree nor anything in this Consent Decree shall be admissible in any proceedings before any administrative, arbitral, or judicial body, except

40

in any proceedings to enforce the provisions of this Consent Decree.

3. As a result of engaging in settlement discussions, the parties have agreed that this action should be resolved by entry of this Consent Decree.

FINDINGS

4. Having examined the terms and provisions of this Consent Decree and based on the pleadings, record and stipulations of the parties, the Court finds the following:

- A. The Court has jurisdiction of the subject matter of this action and of the parties.
- B. All conditions precedent to the institution of this lawsuit have been fulfilled.
- C. The terms and provisions of this Consent Decree are adequate, fair, reasonable, equitable and just. The rights of the EEOC, Admiral and those for whom the EEOC seeks relief are protected adequately by this Consent Decree.
- D. This Consent Decree conforms with the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights and privileges of any person. The entry of this Consent Decree will further the objectives of Title VII and will be in the best interests of the EEOC, Admiral and those for whom the EEOC seeks relief.

NOW, THEREFORE, IT IS ORDERED AND DECREED THAT:

EFFECT OF DECREE

5. This Consent Decree resolves all issues and claims arising out of the Amended

Complaint filed by the EEOC herein, and this Consent Decree shall be binding and final as to all such issues and claims. Accordingly, except for purposes of enforcing the provisions of this Consent Decree in accordance with paragraphs 32 and 35 herein, the Court will dismiss this case, with prejudice, if it has not already done so.

DEFINITIONS

6. For the purpose of this Consent Decree, "class member(s)" as used herein shall refer to the individual(s) listed in Exhibit A attached hereto, all of whom applied for employment with Admiral and whom the parties have determined will receive a monetary award.

INJUNCTIVE RELIEF

7. Admiral, its officers, agents, employees, successors and assigns, and all of those in active concert or participation with them, agree not to engage in any employment practice which discriminates on the basis of race, including, but not limited to, failing or refusing to hire any individual because of race.

8. Admiral, its officers, agents, employees, successors and assigns, and all of those in active concert or participation with them, have not and shall not engage in reprisal or retaliation of any kind against any person because of such person's opposition to any practice made unlawful by Title VII; because of such person's filing of a charge of discrimination, testifying, or participating in any manner in any investigation, proceeding, or hearing under Title VII; because such person participated in any manner in this action or in the investigation giving rise to this action; or because such person asserts any rights under this Consent Decree.

POSTING OF NOTICE

9. Within five (5) business days after entry of this Consent Decree, Admiral shall post

a copy of the Notice to All Employees and Applicants, attached hereto as Exhibit B, in a conspicuous location, readily accessible to and commonly frequented by Admiral's applicants for employment.

10. Admiral shall certify to the EEOC within ten (10) business days of the entry of this Consent Decree that the Notice has been properly posted.

11. The Notice shall remain posted for a period of three (3) years.

RECORD KEEPING

12. Admiral shall maintain and keep available for inspection and copying by the EEOC all applications and other materials submitted in the application process by persons seeking employment with Admiral.

13. Admiral shall maintain and keep all records of hiring for each person who receives an assignment at Admiral, including, but not limited to, records identifying the name and race of each person who receives such assignment.

14. To the extent any other responsive documents are created or utilized, Admiral shall maintain and keep all documents created and/or utilized by Admiral in performing or administering this Consent Decree.

15. Within a reasonable time after the EEOC so requests, Admiral shall make all documents referred to in Paragraphs 12 through 14 available for inspection and review by the EEOC at a mutually convenient date, time and location or will simply produce copies to the EEOC.

REPORTING

16. Every six (6) months for a period of three (3) years from the date of entry of this

Consent Decree, and for purposes of determining Admiral's compliance with the terms of this Consent Decree, Admiral shall provide the EEOC with summaries of the applicant information maintained in accordance with Paragraphs 12 and 13 of this Consent Decree, including (i) the name of the applicant; (ii) the race of the applicant; (iii) the position applied for; (iv) the disposition of the application (*i.e.* whether the applicant was hired); and (v) if hired, the date of hire and the position into which the applicant was hired.

17. To the extent they exist, Admiral shall also provide the EEOC with other reports and materials reasonably necessary to ensure compliance with this Consent Decree.

TRAINING

18. Admiral shall provide training on Title VII according to the following terms:

- A. Admiral shall retain and pay for a consultant/lecturer ("trainer"), approved by the EEOC, to provide training, lasting no fewer than three (3) hours in length, on the subject of the employment provisions of Title VII, including what constitutes discrimination on the basis of race and the proper maintenance of personnel records.
- B. The training will be provided to all Admiral's management, supervisory and hiring personnel. The registry of attendance shall be retained by Admiral for the duration of this Consent Decree.
- C. Admiral shall first provide training on Title VII in accordance with Paragraph 18(A) within sixty (60) calendar days of the entry of this Consent Decree. Admiral shall then also provide training on at least one occasion in calendar year 1999 and on at least one occasion in calendar

year 2000.

19. If Admiral uses a trainer pre-approved in writing by the EEOC, Admiral will submit an outline of the contents of the training to the EEOC within thirty (30) calendar days prior to the training date(s). The EEOC will have fifteen (15) calendar days to suggest additional topics to be included in the outline for the training session by the pre-approved trainer. In the event that Admiral opts to use someone other than a pre-approved trainer, Admiral shall submit the name(s), address(es), telephone number(s) and resume(s) of the proposed trainer(s), together with the date(s) of the proposed training session and a detailed topic outline of the contents of the training, to the EEOC within thirty (30) calendar days prior to the proposed date(s) of training. The EEOC shall have fifteen (15) calendar days from the date of receipt of the information described above to accept or reject the proposed trainer(s) and/or the contents of the detailed topic outline. In the event the EEOC does not approve Admiral's designated trainer(s) and/or outline, Admiral shall have ten (10) calendar days to identify an alternate trainer and/or submit a revised outline. The EEOC shall have ten (10) calendar days from the date of receipt of the information described above to accept or reject the alternate trainer and/or revised outline. In the event the EEOC does not approve Admiral's alternate trainer and/or revised outline, the EEOC shall designate the trainer to be retained and paid for by Admiral and/or provide Admiral with an outline which shall serve as the basis for the substance of the training session.

20. Upon the EEOC's request, Admiral agrees to provide the EEOC with any and all copies of pamphlets, brochures, outlines or other written material(s) provided to the participants of the training session(s).

21. Admiral shall certify to the EEOC in writing within five (5) business days after

the training has occurred that the training has taken place and that the required personnel attended. Such certification shall include: (i) the date, location and duration of the training; (ii) a copy of the registry of attendance, which shall include the name and position of each person in attendance; and (iii) a listing of all current management, supervisory and hiring personnel as of the date of training.

MONETARY AWARDS TO CLASS MEMBERS

22. Within ten (10) business days of the entry of this Consent Decree, the EEOC shall provide Admiral with a list containing the names and last known addresses of all class members identified in Exhibit A.

23. Within thirty (30) calendar days of the entry of this Consent Decree, the EEOC will also provide Admiral with executed copies of all Waiver and Release forms, attached hereto as Exhibit C, that the EEOC has received from class members identified in Exhibit A.

24. Admiral shall pay the class members who have executed the Waiver and Release the sum of \$90,000.00 (Ninety Thousand Dollars) to be distributed as follows:

- A. Admiral shall pay to class members equal, pro rata shares of the \$90,000.00 (Ninety Thousand Dollars) sum, *i.e.* \$552.15 (Five Hundred Fifty Two Dollars and Fifteen Cents).
- B. Admiral shall issue to each class member a check in the amount of \$552.15 (Five Hundred Fifty Two Dollars and Fifteen Cents) within fifteen (15) business days after receipt of the Waiver and Release.
- C. Admiral shall mail the checks to the class members at their last known addresses, as provided by the EEOC, and may use regular mail to do so.

Admiral shall have responsibility for preparing, processing and mailing checks to class members. Admiral shall pay all costs associated with the distribution of funds to class members.

- D. For those class members who have not executed a Waiver and Release, Admiral shall pay their respective *pro rata* shares of the \$90,000.00 (Ninety Thousand Dollars) sum to a non-profit organization, to be agreed upon by the parties, which supports the goals of equal employment for minority workers.

25. Within thirty (30) calendar days of issuing the checks to the class members, Admiral shall certify to the EEOC that it has distributed funds to the class members. At the same time, Admiral shall provide the EEOC a list containing the name of each person who was issued a check, the date the check was issued, and the amount of the check.

26. If a check is returned to Admiral as undeliverable, the EEOC and Admiral shall engage in a good faith effort to locate the class member whose check was returned. Once the class member has been located, Admiral shall issue another check and mail such check to the class member's current address in accordance with Paragraph 24 above. If thirty (30) calendar days after a check is returned as undeliverable, the class member cannot be located, Admiral shall pay such funds to a non-profit organization, to be agreed upon by the parties, which supports goals of equal employment for minority workers.

HIRING OF CLASS MEMBERS

27. Within thirty (30) calendar days of the entry of this Consent Decree, the EEOC will provide Admiral with all copies of the Job Offer Response Sheet, attached hereto as Exhibit

D, that the EEOC has received from class members identified in Exhibit A.

28. As assignments become available, Admiral shall offer employment positions to those class members identified in Exhibit A and who have not executed the Job Offer Response Sheet. All such class members will receive offers and be afforded the same treatment as other offerees receive. For example, like all of Admiral's janitorial hires, the offer of employment to each class member is conditioned upon their agreement to join the union(s) representing Admiral's employees.

29. If a class member, either orally or in writing, states that he or she is not interested in employment with Admiral, either by executing the Job Offer Response Sheet or at the time the job is offered, that class member will be deemed to have rejected the offer, and Admiral will no longer have any obligation under this Consent Decree to offer employment to the class member.

30. It shall be within Admiral's discretion to determine the order in which it offers jobs to class members as long as it does so in a non-discriminatory manner consistent with its obligations under the law and this Consent Decree.

31. The procedure for offering jobs to class members and for confirming acceptance or rejection shall be as follows:

- A. Job offers may be made orally or in writing. All such offers shall state the position offered, the wage or salary rate, the benefits offered and the date to report for work. Job offers made orally shall be memorialized in memoranda to be retained by Admiral in accordance with Paragraphs 12 through 14 of this Consent Decree.

- B. For each class member who accepts a job offer, Admiral shall send a letter confirming his or her acceptance of a job offer to the class member. Admiral shall mail a copy of each confirmation to the EEOC as provided for in Paragraphs 16 and 17 of this Consent Decree.
- C. For each class member who rejects a job offer, Admiral shall send a letter confirming his or her rejection of a job offer to the class member. Admiral shall mail a copy of each confirmation to the EEOC as provided for in Paragraphs 16 and 17 of this Consent Decree.
- D. Admiral shall make a second job offer to class members who express to Admiral a desire to be employed by Admiral, but based on reasonable cause may decline a particular job offered.

COMPLIANCE AND DISPUTE RESOLUTION

32. In the event that the EEOC believes that Admiral has failed to comply with any provision of this Consent Decree, the EEOC shall notify Admiral in writing of such non-compliance within thirty (30) calendar days of the EEOC's knowledge of such non-compliance, and afford Admiral a reasonable period, not less than ten (10) business days, to remedy the non-compliance. If Admiral has not remedied the non-compliance, the EEOC may apply to this Court for a determination that Admiral is in non-compliance and an appropriate order to enforce the provisions of this Consent Decree.

MISCELLANEOUS PROVISIONS

- 33. Each party shall bear its own costs and attorneys' fees.
- 34. Other than for attorneys' fees and other matters which the EEOC is obligated or

partially obligated to provide or perform in accordance with the provisions of this Consent Decree, Admiral shall bear the costs associated with its administration and implementation of this Consent Decree.

35. The Court retains jurisdiction over this matter for the purposes of compliance and enforcement and implementation of the provisions of this Consent Decree. The parties agree that the Court shall retain jurisdiction until any disputes arising under Paragraph 32 are resolved.

36. When this Consent Decree requires the submission by Admiral of documents or other materials to the EEOC, such documents or other materials shall be mailed to: José J. Behar, Jeanne B. Szromba, Equal Employment Opportunity Commission, Chicago District Office, 500 West Madison Street, Suite 2800, Chicago, Illinois 60661.

37. Admiral shall provide any potential successor with a copy of this Consent Decree within a reasonable time prior to the conclusion of negotiations for acquisition or assumption of control of Admiral and shall inform the EEOC of any successor or other material change in corporate structure within ten (10) business days of such a change.

38. To the best of its ability, Admiral and its successors shall assure that all their officers, managers and supervisors observe the terms of this Consent Decree.

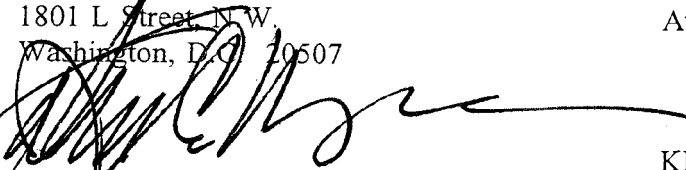
39. By mutual written agreement of the parties, this Consent Decree can be amended in order to effectuate the purposes of the Consent Decree.

For the U.S. Equal Employment
Opportunity Commission


C. Gregory Stewart
General Counsel

Gwendolyn Young Reams
Associate General Counsel

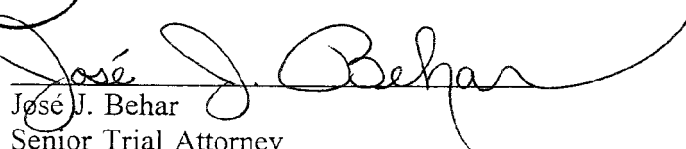
Equal Employment Opportunity
Commission
1801 L Street, N.W.
Washington, D.C. 20507



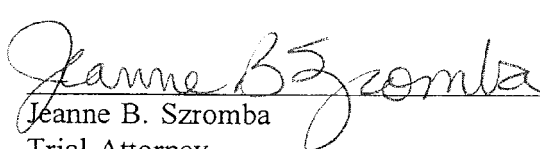
John C. Hendrickson
Regional Attorney



Jean P. Kamp
Supervisory Trial Attorney



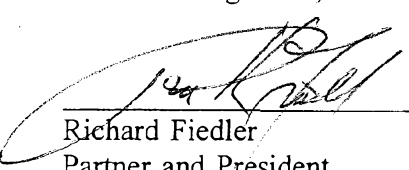
José J. Behar
Senior Trial Attorney



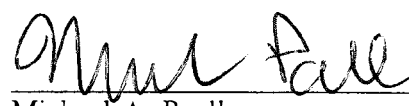
Jeanne B. Szromba
Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
500 West Madison Street
Suite 2800
Chicago, IL 60661
312/353-7722

For Admiral Maintenance Service, L.P. and
OCS Management, Inc.



Richard Fiedler
Partner and President

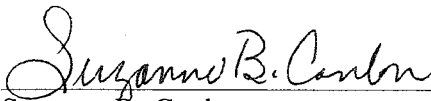


Michael A. Paull
Attorney for Defendants

KLEIN, DUB & HOLLEB, LTD.
660 LaSalle Place
Highland Park, IL 60035
847/681-9100

ENTERED:

Dated: April 10, 1998


Suzanne B. Conlon
United States District Court Judge

a:250

EXHIBIT A

LIST OF AGREED CLASS MEMBERS

1. Michelle Adams
2. Palace Alexander
3. Osmat Appiah
4. Sandra Applewhite-Cross
5. Kevin Ashley
6. Janice Bailey
7. Dedrick Banks
8. Ernest Banson
9. Henry Barnett
10. Jacqueline Battles
11. William Bennett
12. Demetria Bickart
13. Josephine Boone
14. Calvin Braddock
15. Dwayne Brandon
16. Armenta Brent
17. A. D. Brewer
18. Helen Brown
19. Stanley Brown
20. Cynthia Burnam
21. Thomas Butler
22. Cedric Campbell
23. Leo Camphor
24. Pamela Canada
25. Alvin Carter
26. Dennis Cheatams
27. Jimmy Clark
28. Almos Collum, Jr.
29. Paula Covington
30. Curtis Cross, Jr.
31. Donald Davis
32. John Davis
33. Johnetta Davis
34. Elvin Dawson
35. Aaron Dorsey
36. David Douglas
37. Johnny Dykes, Jr.
38. Kevin Edwards
39. Wesley Edwards
40. Richard Ford
41. Felix Freeman
42. Kathy Fuls

43. Cathy Gibson
44. Rochelle Glenn
45. Sherwood Glenn
46. Ronnie Goins
47. Charles Gray
48. Martha Green
49. Rogers Green
50. Sherrod Griffin
51. Willie Griggs
52. Michael Hall
53. Theresa Harris
54. Leroy Hart
55. Angley Hemphill
56. Bobbie Hicks
57. Robert Higgins
58. Tawona Hill
59. Victor Hill
60. Gladys Horton
61. Valencia Huff
62. Richard Hunter
63. Larry Hurn
64. Janet Irving
65. Ernest Isom III
66. Donald Ivy
67. Johnny Jackson
68. Annie James
69. Callettia James
70. Booker Jefferson
71. Felton Johnson
72. Gary Johnson
73. Gwendolyn Johnson
74. Heraldean Johnson
75. Celester Jones
76. Terry Jones
77. Theodore Jordan
78. Milton Killion
79. Ronald Lawrence
80. Jacqueline Lawson
81. Iris Letcher
82. Robert Lewis
83. Jerrod Liggins
84. Abraham Loyd
85. Sharon Lumpkin
86. Melvin Lyons
87. Percy Manning
88. Alecia Marshall

89. Hosie Martin
90. Freddie Mayers
91. Tonya Gill McChristian
92. Walter McClaurin, Jr.
93. Kennard McCune
94. Phillip McGee
95. Ella Minor
96. Kylan Mitchell
97. Sylvia Mitchell
98. James Moore
99. Reginald Morgan
100. Tracy Murray
101. Carl Myrant
102. James Nelson
103. Charles Newbon
104. Donel Owens, Jr.
105. Elgin Parker
106. Lawrence Pate, Jr.
107. Gretter Perkins
108. Georgetta Pines
109. Sydney Pitter
110. Tracy Prather
111. Mashawn Pringle
112. Teddy Ranson, Jr.
113. Louis Reed
114. John Rice
115. Lorraine Rice
116. Roderick Roark
117. Felix Robinson
118. Kevin Robinson
119. Shanda Ross
120. Shuntanvia Rule
121. Linda Saffold
122. Sammy Shannon
123. James Smith
124. Marcel Smith
125. Ruthie Smith
126. Theresa Smith
127. Valorie Smith
128. John Sneed, Jr.
129. Janis Stanton
130. Lavidia Stephens
131. Betty Stewart
132. Maurice Stewart
133. Inesse Thelcius
134. Carlos Thomas

135. Charles Thomas
136. Lenell Townsend
137. Kitty Travis
138. Freddie Tribble
139. Lester Triplett
140. Franklin Tucker
141. Willie Tucker
142. Donald Turner
143. Natasha Vaughn
144. Dorothy Whitfield
145. Arthur Williams
146. Chesia Williams
147. Marilyn Williams
148. Robert Williams
149. Sherry Williams
150. Kevin Williamson
151. Camille Wilson
152. Vivian Wilson
153. James Wims
154. Gloria Winchester
155. Patricia Woodson
156. Andrea Wooten
157. Dorothy Wynn
158. Marcus Yeatman
159. Daniel Young
160. Leta Young
161. Lydia Young
162. Victoria Young
163. Waverly Young

EXHIBIT B

NOTICE TO ALL EMPLOYEES AND APPLICANTS

This Notice is being posted pursuant to an Agreement between Admiral Maintenance Service, L.P. ("Admiral") and the United States Equal Employment Opportunity Commission ("EEOC"). Under the terms of the Agreement, Admiral and the EEOC will work together to ensure that all applicants and employees will be treated fairly and equally, and that no applicants or employees will be discriminated against on the basis of race, color, religion, sex, national origin, age, or disability. Similarly, the EEOC, Admiral, and Admiral's employees will work together to ensure that any person who opposes any practice which is inconsistent with the above stated principles of fairness and equality will not be retaliated against.

Richard Fiedler
President
Admiral Maintenance Service, L.P.

John P. Rowe
District Director
Equal Employment Opportunity Commission

Dated: April 10, 1998

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

This Notice will remain posted as agreed by all parties for three (3) years from the date shown above and must not be altered, defaced or covered by any other material. Any complaints of discrimination or questions concerning this Notice or compliance with its provisions may be directed to the U.S. Equal Employment Opportunity Commission, 500 West Madison Street, Suite 2800, Chicago, Illinois 60661.

EXHIBIT C

WAIVER AND RELEASE

I, for and in consideration of the sum of \$552.15, payable to me under the terms of the Consent Decree entered into by the Equal Employment Opportunity Commission and Admiral Maintenance Service, L.P. and OCS Management, Inc. ("Admiral") on _____, the sufficiency of which is hereby acknowledged, receipt to be effective upon my endorsement of a check or draft for the above sum, on behalf of myself, my heirs, my assigns, executors, and agents, do hereby forever release, waive, acquit, and discharge Admiral, all past and present subsidiaries, divisions, affiliated companies, officers, directors, employees, successors, agents and assigns of Admiral from any and all claims, demands, debts, causes of action, obligations, damages, costs (including attorneys' fees) and liabilities of any kind or nature which I now have or may ever have had against Admiral under Title VII of the Civil Rights Act of 1964, as amended, as a result of or arising from the claims asserted in Commissioner Gallegos v. The Admiral Companies, Charge No. 210 93 0423, and EEOC v. Admiral Maintenance Service, L.P., et al., Case No. 97 C 2034, and I understand and acknowledge that the above consideration is being paid and accepted in settlement of all such disputed claims and is an amount to which I would not otherwise be entitled if I did not sign this Waiver and Release.

I further affirm that the only consideration of my signing this Release is the terms stated above, that no other promise or agreement of any kind has been made to or with me by any person or entity whosoever to cause me to sign the Release; that I am competent to execute this Release; that I fully understand the meaning and intent of this document, and that I have signed this Release voluntarily and knowingly, without coercion, and with full knowledge that I have been given a reasonable amount of time to consider this Waiver and Release and that I have been advised of my right to consult with an attorney as to the terms of this Waiver and Release.

IN WITNESS THEREOF, the undersigned has executed this Release this _____ day of _____, 1998.

Signature of Class Member

Signature of Witness

Witnessed by:

PRINT NAME AND ADDRESS
OF WITNESS

EXHIBIT D

JOB OFFER RESPONSE SHEET

I understand that Admiral will be contacting me in the future to offer me employment as a janitor. The pay for this position will start between \$6.00 and \$6.50 per hour. By signing and returning this sheet, I affirm that I am not interested in such a job and that Admiral need not call me to make me that offer.

I also understand that my decision whether or not to sign and return this form will not affect my receipt of money.

Date: _____

Signature